BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of: **RIBBS TRUCKING, INC.,** **Respondent.**	**Docket No. FMCSA-2007-26786**[1] **(Eastern Service Center)**

FINAL ORDER

1. *Background*

On October 19, 2006, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant) issued a Notice of Claim (NOC) against Ribbs Trucking, Inc. (Respondent), proposing a civil penalty of $70,000.[2] The NOC, which was based on an August 31, 2006 compliance review, charged Respondent with four violations of 49 CFR 382.301(a), using a driver before the motor carrier has received a negative pre-employment controlled substances test result, with a proposed civil penalty of $11,000 per count; and 26 violations of 49 CFR 395.8(e), false reports of records of duty status, with a proposed civil penalty of $1,000 per count. All 30 violations were charged at the maximum civil penalty pursuant to the provisions of section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), codified at 49 U.S.C. § 521, note. As pertinent, section 222 of MCSIA requires FMCSA to assess the maximum civil penalty for each violation by any person who is

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[1] The prior case number was NJ-2006-0354-US0031.

[2] Exhibit A to Motion to Enter Default Final Order for Failure to File Adequate Reply in Accordance with 49 CFR 386.14 (hereafter Motion for Default Order).

found to have committed a pattern of violations of critical or acute regulations or to have previously committed the same or a related violation of critical or acute regulations.[3]

On November 17, 2006, Respondent served a timely reply to the NOC.[4] In its reply, Respondent blamed the "negative findings" of the compliance review on its former safety consultant and claimed it had taken immediate steps to improve its safety compliance under the direction of a new safety consultant. These corrective actions resulted in an upgrade of its unsatisfactory safety rating following a compliance review conducted on November 6, 2006. Respondent did not deny committing the violations charged in the NOC, but claimed the violations were not intentional and requested a reduction in the proposed civil penalty, which it described as "disproportionate to the nature of the actual infractions" and of such magnitude that it "would cripple a company of this size."

On January 3, 2007, Claimant served his Motion for Default Order, in which he argued that Respondent's reply to the NOC was equivalent to a failure to reply because it did not elect any of the options set forth in 49 CFR 386.14(b): (1) paying the full amount of the civil penalty; (2) contesting the claim by requesting administrative adjudication pursuant to 49 CFR 386.14(d);[5] or (3) seeking binding arbitration in accordance with the Agency's dispute resolution program. In the alternative, Claimant requested that this matter be referred for a hearing solely on the issue of Respondent's ability to pay the proposed civil penalty. Claimant also maintained

[3] Sections 382.301(a) and 395.8(e) have been designated critical regulations in Appendix B to 49 CFR Part 385, section VII.

[4] Exhibit B to Motion for Default Order.

[5] The options for administrative adjudication are: (A) submission of written evidence without a hearing; (B) an informal hearing; or (C) a formal hearing. See 49 CFR 386.14(d)(1)(iii).

that the Eastern Service Center attempted to negotiate a settlement of this matter, but Respondent cancelled the settlement conference and has not initiated any further settlement discussions.

On January 11, 2007, Respondent served a Motion in Opposition to Enter Default. Respondent denied that it was no longer seeking to settle the case. It attached a certification by its counsel stating that he had tried to contact counsel for Claimant several times, but his calls were not returned. Respondent requested that no action on Claimant's motion be taken pending further attempts to settle this matter.[6]

Claimant served a response to Respondent's Motion in Opposition on February 7, 2007, and Respondent responded to Claimant's response on February 27, 2007. These pleadings primarily address the failure of Claimant's counsel to return Respondent's counsel's phone calls and the inability of the parties to settle the matter. Section 386.34(c) of the Rules of Practice requires that answers to motions be served within 20 days after the motion is served. Hence Claimant's February 7, 2007 response was not timely filed.[7] Moreover, the Rules of Practice do not provide for the filing of replies to answers to motions. Respondent's February 27, 2007 pleading was a reply to Claimant's answer to Respondent's Motion in Opposition. Although the Agency has allowed parties to file motions seeking leave to file replies to answers in appropriate circumstances, Respondent did not file such a motion in this case. Consequently, the February 7 and February 27, 2007 pleadings will not be considered.

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[6] This request is denied. Since more than 3 years have elapsed without a Settlement Agreement being submitted for my approval in accordance with 49 CFR 386.22, it is safe to conclude that any attempts to settle this matter have been unsuccessful.

[7] The deadline for serving a response to Respondent's motion was February 5, 2007, which was calculated by adding 20 days from January 11, 2007, plus an additional 5 days in accordance with 49 CFR 386.8(c)(3) because the motion was served by mail.

2. *Decision*

Claimant correctly noted that Respondent, in its November 17, 2006 reply to the NOC, did not elect any of the options listed under § 386.14(b). It did not pay the $70,000 civil penalty. It did not contest the claim by requesting administrative adjudication. Instead, it contended that the violations (which it described as "negative findings") were not intentional and have since been corrected. By not denying the violations, Respondent effectively admitted the charges.[8] Having admitted the charges and not tendering payment of the civil penalty, Respondent's only remaining option was to request binding arbitration pursuant to § 386.14(b)(3). However, FMCSA's "Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996" plainly states "FMCSA will not agree to arbitrate maximum penalty cases issued pursuant to section 222 of [MCSIA]."[9] Because the NOC in this case asserted maximum civil penalties pursuant to section 222 with respect to all 30 violations, Respondent is ineligible for binding arbitration.[10]

Accordingly, Claimant's Motion for Default Order is granted. Respondent's default makes the NOC, including the civil penalty proposed in the NOC, the Final Agency Order in this proceeding.

THEREFORE, *It Is Hereby Ordered That* Respondent pay to the Field Administrator for the Eastern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of $70,000 for 30 violations of the Federal Motor Carrier Safety Regulations. Payment

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[8] Pursuant to 49 CFR 386.14(d)(1)(i), any allegation in the NOC not specifically denied in the reply is deemed admitted.

[9] 69 Fed. Reg. 10288, 10292 (March 4, 2004).

[10] See *In the Matter of Tom Ort Trucking, Inc.*, Docket No. FMCSA-2007-0006, Order Appointing Administrative Law Judge, April 8, 2010, at 5.

may be made electronically through FMCSA's registration site at http://safer.fmcsa.dot.gov by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Claimant at the address shown in the Certificate of Service.[11]

Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5.21.10
Date

[11] Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

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CERTIFICATE OF SERVICE

This is to certify that on this 24 day of May, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Frank Ribeiro, President Ribbs Trucking, Inc. 116 Hobart Avenue Bayonne, NJ 07002	One Copy U.S. Mail
Frank Capece, Esq. Garrubo, Capece & Millman, P.C. 53 Cardinal Drive Westfield, NJ 07090-1097	One Copy U.S. Mail
Anthony G. Lardieri, Esq. Trial Attorney Office of Chief Counsel (MC-CCE) Federal Motor Carrier Safety Administration 802 Cromwell Park Drive, Suite N Glen Burnie, MD 21061	One Copy U.S. Mail
Loretta Bitner, Acting Field Administrator Federal Motor Carrier Safety Administration 802 Cromwell Park Drive, Suite N Glen Burnie, MD 21061	One Copy U.S. Mail
Christopher Rotondo New Jersey Division Administrator Federal Motor Carrier Safety Administration One Independence Way, Suite 120 Princeton, NJ 08540	One Copy U.S. Mail
Docket Operations U.S. Department of Transportation 1200 New Jersey Avenue SE Room W12-140 Washington, DC 20590	Original Personal Delivery

Jennie Miller